



[4830-01-p]

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9586]

RIN 1545-BK83

Removal of Regulations Requiring 3% Withholding by Government Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document provides a Treasury decision that removes the final regulations contained in TD 9524 relating to withholding by government entities on payments to persons providing property or services, and makes conforming amendments to regulations to reflect the removal of these regulations. The final regulations are removed because the 3% Withholding Repeal and Job Creation Act repealed the provision of the Internal Revenue Code underlying the final regulations before the provision became effective. The guidance affects government entities that would have been required to withhold and report tax from payments to persons providing property or services and also affects the persons receiving payments for property or services from these government entities.

DATES: Effective Date: These regulations are effective on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Applicability Date: For dates of applicability, see §§ 31.6011(a)-4(d) and 31.6302-1(n).

FOR FURTHER INFORMATION CONTACT: A. G. Kelley, (202) 622-6040 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### **Background**

This document contains amendments to 26 CFR Part 31 under section 3402(t) of the Internal Revenue Code (Code), relating to three percent withholding by government entities on payments for property or services. Section 3402(t) of the Code was added by section 511 of the Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109-222 (TIPRA), 120 Stat. 345, which was enacted on May 17, 2006. The Treasury Department and the IRS issued final regulations under sections 3402(t), 3406, 6011, 6051, 6071, and 6302 of the Code that were published in the **Federal Register** on May 9, 2011 (TD 9524, 76 FR 26583, 2011-23 IRB 843) (the May 2011 final regulations). Those regulations were issued to implement the requirements of section 3402(t) and conform existing regulations to section 3402(t).

Section 102 of the 3% Withholding Repeal and Job Creation Act (Public Law 112-56, 125 Stat. 711), which was enacted on November 21, 2011, repealed section 3402(t) of the Code. Section 3402(t) was repealed before it became effective.

This document, therefore, removes the regulatory provisions issued under section 3402(t) and related sections, and makes conforming amendments to certain regulations to reflect the removal of the section 3402(t) regulations.

At the same time as the issuance of the May 2011 final regulations, the Treasury Department and the IRS also issued proposed regulations under section 3402(t), published in the **Federal Register** on May 9, 2011 (REG-151687-10, 76 FR 26678,

2011-23 IRB 867). A related document withdraws those proposed regulations in light of the repeal of section 3402(t). See REG-151687-10.

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, and because no notice of proposed rule making is required for this rule, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

### **Drafting Information**

The principal author of these final regulations is A. G. Kelley, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

### **List of Subjects in 26 CFR Part 31**

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 31 is amended as follows:

#### **PART 31--EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE**

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 □ □ □

Par. 2. The following sections and paragraphs are removed:

1. Remove section 31.3402(t)-0.
2. Remove section 31.3402(t)-1.
3. Remove section 31.3402(t)-2.
4. Remove section 31.3402(t)-3.
5. Remove section 31.3402(t)-4.
6. Remove section 31.3402(t)-5.
7. Remove section 31.3402(t)-6.
8. Remove section 31.3402(t)-7.
9. Remove paragraphs (h) and (i) of section 31.3406(g)-2.

Par. 3. Section 31.6011(a)-4 is amended by:

1. Revising paragraphs (b)(4), (b)(5), and (d).
2. Removing paragraph (b)(6).

The revisions read as follows:

§31.6011(a)-4 Returns of income tax withheld.

\* \* \* \* \*

(b) \* \* \*

(4) Pensions, annuities, IRAs, and certain other deferred income subject to withholding under section 3405; and

(5) Reportable payments subject to backup withholding under section 3406.

\* \* \* \* \*

(d) Effective/applicability dates. Paragraphs (a)(1) and (a)(4)(i) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (a)(4)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraph (a)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in §31.6011(a)-4 as in effect prior to December 30, 2008. The rules of paragraph (a)(4)(ii) of this section that apply to taxable years beginning before January 1, 2010, but on or after December 30, 2008, are contained in §31.6011(a)-4T as in effect on or after December 30, 2008. The rules of paragraph (a)(4) of this section that apply to taxable years beginning before December 30, 2008, are contained in §31.6011(a)-4T as in effect prior to December 30, 2008.

Par. 4. Section 31.6051-5 is removed.

Par. 5. Section 31.6071(a)-1 is amended by:

1. Revising paragraph (a)(3)(i).
2. Removing paragraph (g).

The revision reads as follows:

§31.6071(a)-1 Time for filing returns and other documents.

(a) \* \* \*

(3) Information returns—(i) General rule. Each information return in respect of wages as defined in Federal Insurance Contributions Act or of income tax withheld from wages as required under §31.6051-2 must be filed on or before the last day of February (March 31 if filed electronically) of the year following the calendar year for which it is made, except that, if a tax return under §31.6011(a)-5(a) is filed as a final return for a period ending prior to December 31, the information return must be filed on or before

the last day of the second calendar month following the period for which the tax return is filed.

\* \* \* \* \*

Par. 6. Section 31.6302-1 is amended by:

1. Revising paragraph (e)(1)(iii)(C).
2. Removing paragraph (e)(1)(iii)(E).
3. Revising paragraph (n).

The revisions read as follows:

§31.6302-1 Deposit rules for taxes under the Federal Insurance Contributions Act (FICA) and withheld income taxes.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(C) Certain annuities described in section 3402(o)(1)(B); and

\* \* \* \* \*

(n) Effective/applicability dates. Sections 31.6302-1 through 31.6302-3 apply with respect to the deposit of employment taxes attributable to payments made after December 31, 1992. To the extent that the provisions of §§31.6302-1 through 31.6302-3 are inconsistent with the provisions of §§31.6302(c)-1 and 31.6302(c)-2, a taxpayer will be considered to be in compliance with §§31.6302-1 through 31.6302-3 if the taxpayer makes timely deposits during 1993 in accordance with §§31.6302(c)-1 and 31.6302(c)-2. Paragraphs (b)(4), (c)(5), (c)(6), (d) Example 6, (e)(2), (f)(4)(i), (f)(4)(iii),

(f)(5) Example 3, and (g)(1) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (f)(4)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraphs (e)(2) and (g)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in §31.6302-1 as in effect prior to December 30, 2008. The rules of paragraphs (b)(4), (c)(5), (c)(6), (d) Example 6, (f)(4)(i), (f)(4)(iii), and (f)(5) Example 3 of this section that apply to taxable years beginning on or after January 1, 2006, and before December 30, 2008, are contained in §31.6302-1T as in effect prior to December 30, 2008. The rules of paragraphs (b)(4) and (f)(4) of this section that apply to taxable years beginning before January 1, 2006, are contained in §31.6302-1 as in effect prior to January 1, 2006. The rules of paragraph (g) of this section eliminating use of Federal tax deposit coupons apply to deposits and payments made after December 31, 2010.

Par. 7. Section 31.6302-4 is amended by:

1. Revising paragraphs (b)(4) and (b)(5).
2. Removing paragraph (b)(6).
3. Revising paragraph (e).

The revisions read as follows:

§31.6302-4 Deposit rules for withheld income taxes attributable to nonpayroll payments.

\* \* \* \* \*

(b) \* \* \*

(4) Annuities withheld under section 3405, relating to withholding on pensions, annuities, IRAs, and certain other deferred income; and

(5) Amounts withheld under section 3406, relating to backup withholding with respect to reportable payments.

\* \* \* \* \*

(e) Effective/applicability date. Section 31.6302-4(d) applies to deposits and payments made after December 31, 2010.

Steven T. Miller

Deputy Commissioner for Services and Enforcement.

Approved: April 17, 2012

Emily S. McMahon

Acting Assistant Secretary of the Treasury (Tax Policy).

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